

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5915 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BULAKHIDAS V PATEL

Versus

GSRTC

Appearance:

MR AJ PATEL for Petitioner
MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 13/04/99

ORAL JUDGEMENT

1. The petitioner challenges the appellate order made by the learned Extra Assistant Judge, Nadiad in Misc. Civil Appeal No.64 of 1985 under section 9 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act 1972 dismissing the appeal of the petitioner and confirming the order of the competent officer evicting the petitioner from the pan bidi stall

premises situated in Dakore Bus Station and order recovery of mesne profits of Rs. 23,296/- for the period from 19.1.1983 to 10.3.1985 at the rate of Rs.1401/- per month.

2. The stall in question was given to the petitioner on 19.1.1972 as a licensee which licence was renewed from time to time until it ended on 1983. The petitioner was thereafter called upon by a notice dated 10.9.82 to hand over the possession of the stall on 18.1.1983. Tenders were invited for giving the stall on licence and offers were received of Rs. 1400/- p.m. and Rs. 1251/- p.m. Since the petitioner did not hand over the possession of the stall and filed a Civil Suit in the court of the learned Civil Judge(JD) at Dakore he remained in occupation of the premises under the interim orders. The interim relief was thereafter vacated and thereupon eviction proceedings were started by the Competent Authority under the provisions of the said Act. Due opportunity of hearing was given to the petitioner by the competent officer by issuing notice which was sent by Registered post A.D. and also pasted on the disputed premises. The petitioner appeared in response to the notice and sought for an adjournment and therefore the matter was fixed on 19.11.84. Several chances were given to the petitioner to engage an advocate during the inquiry, which fact has been narrated in the order of the competent authority.

3. The licence had come to an end by efflux of time and therefore, the petitioner did not have any right to continue in the stall in question. The Competent Authority therefore, found that he was liable to be evicted having remained in unlawful possession of the premises beyond the period of licence. On the basis of the highest offer that came when the tenders were invited, the damages were worked out for the period of unauthorised occupation. The amount which was paid by the petitioner was adjusted till the date when he paid it as against the amount of mesne profit which were worked out on the basis of highest offer of Rs. 1401/p.m., for the stall in question.

4. The appellate authority confirmed his finding of fact after giving adequate hearing to the petitioner. It should be borne in mind that the petitioner was given a notice by the Competent Authority asking him why an order for payment of damages should not be made. This was also the requirement laid down in the decision of this Court in Fulaji Okhaji vs. Union of India & Ors. 26(1) GLR 434 which lays down that no order for damages under sub-section (2) of section 7 of the said Act could be

made without issuing a notice to the petitioner calling upon him to show cause why such an order should not be passed against him.

5. The petitioner had no right to continue beyond the date on which the licence came to an end and therefore, he was liable to be evicted under the provisions of the said Act. The Competent Authority and the Appellate Authority have based their decisions on the material on record and have not taken into consideration any extraneous factor while deciding the matter. They have acted in lawful exercise of their jurisdiction and for valid reasons, warranting no interference by this court in exercise of its writ jurisdiction. The petition is therefore, rejected. Rule is discharged with no order as to costs.